THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Thomas J. Sullivan, et al.
Appl. No.: 09/385,489
Conf. No.: 9228
Filed: August 30, 1999
Title: SYSTEM AND METHOD FOR ADMINISTERING PROMOTIONS
Art Unit: 3622
Examiner: D. Lastra
Docket No.: 0110754-629

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Sir:

Appellants submit this Reply Brief in response to the Examiner's Answer dated April 17, 2006 pursuant to 37 C.F.R. §1.193(b)(1). Appellants respectfully submit that the Examiner's Answer failed to remedy the deficiencies of the Final Office Action as set forth in the Appellants' Appeal Brief filed on February 2, 2006. Accordingly, Appellants respectfully request that the rejection of pending Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. §103 be reversed and that the Board find the appealed claims patentable over the prior art of record.

I. Trade Promotion Examples

The following examples are used herein to help explain in part why Jones and Schultz do not render the claimed invention obvious.

In a first example trade promotion, the manufacturer and retailer agree that the manufacturer will owe the retailer $0.20 for each promoted cookie package sold by the retailer during the trade promotion. The $0.20 per promoted cookie package sold is a predetermined payment value which the manufacturer will owe to the retailer for the cookie package trade promotion. In this example trade promotion, the retailer is not providing discounts to the consumers for the promoted cookie packages purchased during the trade promotion. In this example, the retailer may run a local advertisement to promote the cookie packages, or provide some other promotion for the cookie packages. (In this example, the retailer purchases each cookie package from the manufacturer for $2.00 and the retailer charges the consumers $3.00 for each cookie package purchased during the trade promotion).

In a second example trade promotion, the manufacturer and retailer agree that the manufacturer will owe the retailer $0.70 for each promoted cookie package sold by the retailer during the trade promotion because the retailer is encouraged to give the consumers a $0.50 discount on each promoted cookie package purchased during the trade promotion. The $0.70 per promoted cookie package sold is a predetermined payment value which the manufacturer will owe to the retailer for the cookie package trade promotion. In this example, the retailer may put the cookie packages in a display at the end of an aisle and advertise the $0.50 discount, or provide some other promotion for the cookie packages. (In this example, the retailer purchases each cookie package from the manufacturer for $2.00 and the retailer charges the consumers $2.50 for each cookie package purchased during the trade promotion).

In a third example trade promotion, the manufacturer and retailer agree that the manufacturer will owe the retailer $2000.00 for conducting the cookie package trade promotion. The $2000.00 is a predetermined payment value which the

manufacturer will owe to the retailer for conducting the cookie package trade promotion. In this type of trade promotion, the retailer may or may not give a discount to the consumer for each promoted cookie package purchased during the trade promotion. In this example, the retailer typically provides some type of promotion for the cookie packages.

Other examples include combinations of the above types of trade promotions between the manufacturer and retailer.

II. The Board Previously Held that Jones Does Not Teach that the Independent System Determines the Amount of Money the Manufacturer Owes to the Retailer for the Trade Promotion.

Appellants and the Examiner substantially disagree as to what Jones teaches and how the 2004 Board Decision interpreted Jones.

Jones does not teach storing in its database a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion. For example, Jones does not teach storing in its database that the manufacturer will owe the retailer $0.20 for each promoted cookie package sold by the retailer during the trade promotion. Jones does not use a stored predetermined payment value (e.g., $0.20 per promoted cookie package) to determine an amount of money the manufacturer owes to the retailer for the trade promotion. Jones does not use a determined amount of money to facilitate settlement between the manufacturer and the retailer for the trade promotion.

Jones also does not teach storing in its database a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. For example, Jones does not teach storing in its database that the manufacturer will owe the retailer $2000.00 for conducting the cookie package trade promotion. Jones does not use this stored predetermined payment value (e.g., $2000.00 for conducting the trade promotion) to determine an amount of money the

manufacturer owes to the retailer for conducting the trade promotion. Jones does not use this determined amount of money to facilitate settlement between the manufacturer and the retailer for the trade promotion.

The 2004 Board Decision held (on page 14) that "we fail to find that Jones teaches the independent system operator to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufactures payment of [sic] the amount of money owed." The 2004 Board Decision did not hold that the Jones system stores and uses either of the predetermined payment values present in any of the appealed claims.

The 2004 Board Decision simply interpreted the previous claim language "payment term information" to be broad enough to include sales volume information of the promoted product (i.e., the number of promoted products sold). Thus, the Board concluded that Jones taught capturing and storing "payment term information" under this broad definition. In view of the 2004 Board Decision, Appellants removed this language from the claims and substituted the "predetermined payment value" claim language.

The Examiner now reasons (on pages 35 and 36 of the Examiner's Answer) that the:

> Board of Appeal decided that sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion. Therefore, information of sales volume can be properly construed to be "predetermined payment value" since predetermined payment value relates to the amount of money owed by the manufacturer to the retailer for the promotion.

The Examiner is thus relying on the 2004 Board Decision to conclude that sales volume information or the number of promoted products sold during the promotion (e.g., 10,000 promoted cookie packages sold) can be construed to be the predetermined payment values (such as $0.20 per promoted cookie package, $0.70 per promoted cookie package, or $2000.00 for the cookie package trade

promotion as in the above examples). These are, however, completely different pieces of information and the Examiner's interpretation of the 2004 Board Decision is clearly incorrect.

Relying on this incorrect construction, the Examiner then goes on to reason (on page 36 of the Examiner's Answer) that the:

> Board of Appeal found, "Thus, retaining the files for 52 weeks and providing reports of files, Jones teaches a method of enabling the retailer and the manufacturer to access the electronic database file to determine the **stored** terms of the trade promotion". Therefore, Jones teaches allowing manufacturers and retailers access to the independent system operator database to allow determination of amount of money owed **(i.e. stored terms of the trade promotion and sales volume)** to have a prompt and accurate settlement between the parties. [Second Emphasis added]

In the above emphasized language, the Examiner appears to infer that Jones teaches that the predetermined payment values (e.g., such as $0.20 per promoted cookie package, $0.70 per promoted cookie package, or $2000.00 for the cookie package trade promotion as in the above examples) are "stored" in the Jones database in addition to storage of the sales volume information. However, it is respectfully submitted that a careful reading of the 2004 Board Decision indicates that at most the Board found that the Jones system stores in its database an identification of the promoted product and the number of promoted products sold (e.g., 10,000 promoted cookie packages sold). The Jones system (without additional information such as the predetermined payment values $0.20, $0.70 or $2000.00) does not enable either the manufacturer or the retailer to access its system to determine the amount of money owed to the retailer for the trade promotion.

Moreover, while Jones recognizes that manufacturers and retailers enter into agreements to effect trade promotions, Jones does not recognize the problem that what the manufacturers and retailers each believe to be the trade promotion contract terms often are not consistent. For example, (a) the retailer may believe that the manufacturer will owe the retailer $0.22 for each promoted cookie package sold by the retailer during the trade promotion, and (b) the manufacturer may believe that the manufacturer will owe the retailer $0.20 for each promoted cookie

package sold by the retailer during the trade promotion. Jones neither recognizes this problem nor provides a solution for solving this problem.

Rather, the Jones solution is to send reliable sales volume information (e.g., 10,000 promoted cookie packages sold) to the manufacturers and retailers. This occurs without storage of the payment value per product (e.g., the $0.20 or the $0.70) or the payment value per trade promotion (e.g., the $2000.00). Jones presumes that the manufacturer and retailer already have such information in their possession and is therefore only interested in providing these parties information regarding the number of products sold. Jones expressly teaches providing the sales data (e.g., 10,000 cookie packages sold) to the manufacturer and retailer for them to calculate for themselves or to verify each other's calculations of the amount of money owed for the trade promotion. The solution provided by Jones is that the manufacturer has separately obtained a record of the consumer-retailer transactions from the in-store cash registers and does not have to worry about the retailer changing or manipulating the POS data the retailer collects for the cookie packages, or that the retailer is incorrectly interpreting the POS data the retailer collects for the cookie packages.

The Jones system does not need to store at least one of a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion (e.g., the $0.20 or the $0.70), and a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (e.g., the $2000.00) because that information is irrelevant for the intended purpose of Jones. Nor does the Jones system need to process the promoted product POS data (e.g., 10,000 promoted cookie packages) in accordance with at least one the stored predetermined payment values (e.g., $0.20, $0.70 or $2000.00) to determine an amount of money the manufacturer owes to the retailer for the trade promotion. Jones simply does not need this information because the intended purpose of Jones is to provide a separate verification of the number of promoted products sold (e.g., 10,000), and as indicated by the 2004 Board Decision not for determining "the amount of money

the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment."

Accordingly, Appellants respectfully submit that the Examiner's reasoning is incorrect and reflects substantial misstatements regarding Jones and the 2004 Board Decision.

III. Schultz Discloses a Consumer Promotion Between a Manufacturer and a Consumer, Not a Trade Promotion Between a Manufacturer and a Retailer

Appellants and the Examiner also substantially disagree as to what Schultz teaches.

Schultz describes consumer promotions, not trade promotions. These are related, but different concepts. More specifically, Schultz describes consumer promotions where manufacturers (through the Schultz program operator) provide reward booklets to consumers. The reward booklets inform the consumers of available reward offers. The booklets will generally include multiple reward offers from multiple different manufacturers. Consumers receive cashable reward certificates if the consumers purchase specified amounts of the promoted products identified in the reward booklets.

For example, a reward booklet may inform a consumer that if the consumer purchases 5 promoted cookies packages within a designated time period (such as the month of March), the consumer will receive $5.00 in the form of a cashable reward certificate. If the consumer only purchases 4 promoted cookies packages during the designated time period, the consumer does not receive a reward certificate for the purchases of those cookie packages. After the purchase of the fifth promoted cookie package during the time period, the consumer receives the $5.00 in the form of the reward certificate for the 5 promoted cookie packages purchased by the consumer. The reward certificate may also include payments for the consumer's purchases of several different promoted products. In this example, the reward certificate may be $25.00 ($5.00 of which is from the purchase of the 5 promoted cookie packages). The manufacturers' payments to the consumers in

Schultz are for purchasing the promoted products and are in the form of cashable reward certificates.

The Schultz program operator enters into contracts with retailers to treat the reward certificates as a form of currency and to cash reward certificates tendered at the retailers by the consumers. Each reward certificate (such as a $25.00 reward certificate) functions as a form of currency that is acceptable at these retailers and may be used by the consumer toward the purchase of any products at one of the retailers. The retailer may or may not have sold the promoted products to the consumer. The retailer is paid for cashing the reward certificate whether or not the consumers purchased the promoted products from the retailer and whether or not any further promoted products are purchased at the time the reward certificate is cashed.

IV. The Examiner's Various Interpretations of Schultz are Incorrect

Appellants respectfully request that the Board carefully review Schultz and the Examiner's various references to Schultz. The Examiner has repeatedly misstated or misinterpreted the teachings of Schultz. Certain examples of the Examiner's misstatements are discussed below.

Page 34 of the Examiner's Answer states that:

> Schultz teaches a central management firm (i.e. independent system operator) which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers.

This is incorrect. Schultz does not teach promotions between retailers and manufacturers and thus does not teach settling any such promotions.

Pages 40 and 43 of the Examiner's Answer states that:

> Schultz teaches in column 7, lines 55-60 that consumer is able to make reward product 28 purchases at more than one retail store and have the purchase credits combined in the PMCS and that periodically the purchase records residing in the PMCS data receiver are compared with the offer records in the offer file 6 to

> determine which purchases correspond to an available purchase reward offer 2.
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> Column 9, lines 7-14 teaches based upon reward product invoices, the manufacturer pays the central management firm for those rewards earned and paid to consumers and column 10, lines 44-53 teach that from the redemption records, the central management firm determines the redemption amounts and reimburses the retail store. Finally the central management firm uses the reward files to prepare a report of reward items sold to send to the manufacturer. **Therefore, Shultz teaches a central management firm which audits and tracks all POS data obtained from retail stores to settle all reward promotions between retailers and manufacturers.** [Emphasis added]
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> Schultz teaches in column 7, lines 60-67 that "periodically, usually weekly, the purchase records 30 residing in the PMCS data receiver 7 are compared with the offer records in the offer file 6 to determine which purchases corresponds to an available purchase reward offer 2". Therefore, **Schultz compares the terms for a promoted product (i.e. offer file 6) with monitored POS data (i.e. purchase record 30) to settle the transaction between retailers and manufacturers** (see Schultz column 9, lines 5-15; column 10, lines 35-45). [Emphasis added]

Schultz does not use the POS data from retailers to settle transactions between the retailers and manufacturers. The Schultz program operator uses the POS data to determine if participating consumers are entitled to reward certificates based on their purchases of promoted products.

Pages 34-35 of the Examiner's Answer states that:

> Schultz uses the purchase records obtained from the POS data to prepare reports that are sent to the manufacturers and retailers (see Schultz, column 8, lines 7-25).

The Schultz program operator does not use these reports to determine amounts of money owed by the manufacturer to the retailer for any promotion or to facilitate any settlement between the retailer and the manufacturer.

Page 35 of the Examiner's Answer states that:

> Schultz further uses the redemption records to determine the redemption amount for reimbursing retailers and uses the purchase record to bills the manufacturers for those rewards earned and paid to consumers (see Schultz, column 9, lines 5-12; column 10, lines 35-42).

These referenced sections in Schultz appear to be directed to reimbursing the retailer for reward certificates and not for reimbursing the retailer for promoting products. The Examiner attempts to clarify this statement at Pages 38, 41 and 42 of the Examiner's Answer which states that:

> Schultz teaches in Column 10, lines 35-45 that the central management firms uses the redemption records obtained from redeemed credits given to consumers obtained from purchasing promoted products to determine how much to reimburse a participating retail store. **Therefore, contrary to Appellant's argument, Schultz teaches providing payments to retailers for the sale of the promoted products.** [Emphasis added]
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> [I]n Schultz, the reward certificates are obtained from consumers' purchase of promoted products. The consumers received credits for purchase of promoted products and said credits are given to consumers in the form of reward certificates (see Schultz column 8, lines 56-67). Therefore, the Schultz system is directed to the purchase of promoted products.
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> [I]n Schultz, the reward certificates are obtained from purchase of promoted products and retailers are paid for consumers that redeemed said reward certificates (see Schultz, column 7, lines 45-67, column 8, lines 47-67; column 10, lines 35-45).

The Examiner's logic appears to be that: (a) the consumers earns reward certificates by purchasing promoted products, (b) the Schultz program operator pays the retailers for cashing the reward certificates, and thus (c) the retailers get paid for the sales of the promoted products.

However, this ignores the fact that the payments to the retailers are not tied, vis-à-vis the retailers, at point (b) to the purchase of promoted products. The

retailers are not paid by the Schultz program operator for the purchase of the promoted products by the consumers, but rather are paid by the Schultz program operator for cashed reward certificates earned by the consumers for previous purchases made by the consumers. Moreover, the retailers are not paid for any trade promotion as in the presently appealed claims because the reimbursed retailer does not conduct any trade promotion.

Additionally, Schultz does not teach using the records of the purchased promoted products to determine the amounts for paying retailers. Those records are used for providing the reward certificates to consumers according to the offers in the reward booklets.

Rather, Schultz discloses that records of the reward certificates are used to bill the manufacturers for those reward certificates earned and paid to consumers, and for auditing the amounts paid to consumers for the reward certificates. Accordingly, Schultz does not teach facilitating or paying the retailers the amounts of money owed to a retailer by a manufacturer for promoting a product.

Pages 37, 38 and 39 of the Examiner's Answer states that:

> **Schultz teaches in column 10, lines 35-45 that the retailer is reimbursed by the manufacturer for the trade promotion, and column 9, lines 7-13 teaches that the settlement is done by the third party audit system (see Schultz figure 1, item 3).** In Schultz, it is inherent that the retailer has a contract with the manufacturer when Schultz teaches that participating retailers distinctively displayed the manufacturer's promotions products [*sic*] on the shelves of said retail store and that manufacturer's vouchers are redeemed at participating retail store for credit toward product purchases (see Schultz column 8, lines 63-67). Therefore, it is inherent that for participating retailers to distinctively display manufacturers products and redeem manufacturers vouchers, as there must be some type of agreement between the retailers and manufacturers to honor said displaying and said redeeming. [Emphasis added]
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> Schultz teaches in column 7, lines 55-60; column 8, lines 63-67 discount or credits given to consumers at a point of sale,. [*sic*]

The Examiner misstates the teachings of Schultz in Columns 9 and 10. Schultz does not teach that the payments to the retailer are for a trade promotion as there are no trade promotions in Schultz. As stated above, Schultz teaches a consumer promotion, not a trade promotion. The Examiner completely ignores the differences between trade promotions and consumer promotions which are set forth in the specification of the present application and the appeal brief.

The Examiner reasons that Schultz inherently teaches the existence of a "trade promotion" contract between the retailer and manufacturer because the retailer is displaying the promoted products and redeeming the reward certificates. For Schultz to inherently teach this, the missing descriptive material must be necessarily present, not merely probable or possibly present in Schultz.

The retailer in Schultz redeems the reward certificates in Schultz because the retailer has a contract with the Schultz program operator to treat the reward certificates as a form of currency. Thus, Schultz does not inherently teach any trade promotion contract between the retailer and the manufacturer.

The retailer purchases and displays the manufacturer's products under conventional retailer-manufacturer product purchase agreements. The retailer in Schultz is not contractually obligated to provide a promotion for the product. Thus, Schultz does not inherently teach any trade promotion contract between the retailer and the manufacturer for the products that are promoted in Schultz.

The retailer in Schultz provides the Schultz program operator POS data because the retailer has a contract with the Schultz program operator to provide this information. The providing of the POS data and the cashing of the reward certificate is most likely covered by a contract between the Schultz operator and the retailer. The retailers want to have this arrangement so they can have the consumers come to their stores and purchase products. Thus, Schultz does not inherently teach any trade promotion contract between the retailer and the manufacturer.

> Page 39 of the Examiner's Answer states that:
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> [E]ven if some reward certificate may not be cashed by a retailer, other reward certificates may be cashed. Therefore, Schultz teaches the Appellant's claim invention of facilitating the manufacturers payment of the amount of money owed to the retailer for the trade promotions. [*sic*]

Facilitating payments to a retailer for cashing reward certificates is not facilitating payments to a retailer for a trade promotion or for conducting a trade promotion.

> Pages 38 and 39 of the Examiner's Answer states that:
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> [A]ccording to Appellant, the Schultz system does not teach facilitating or paying the retailer for a discount on the purchase product, but rather simply for the cashing of a reward certificate. The Examiner answers that Appellant's claims do not recite facilitating or paying the retailer for a discount on the purchase product. Appellant's claims recite, "facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion" and Schultz teaches in column 8, lines 15-25; column 9, lines 7-15 and column 10, lines 35-45 a system that indeed facilitates payment between manufacturers and retailers for non-coupon promotions. [*sic*]

This reasoning ignores the fact that the Examiner is using Schultz to solve the deficiencies in Jones where Jones does not teach: (a) determining an amount of money the manufacturer owes to the retailer for the trade promotion or conducting the trade promotion, and (b) facilitating payment of such determined amount of money to the retailer for the trade promotion or conducting the trade promotion. Moreover, the amount of money paid to the retailer in Schultz is for the amounts of the reward certificates, not amounts for the retailer conducting any trade promotion. Even if these amounts result from the previous sales of products promoted by the manufacturers in the reward booklets, the Schultz system does not teach facilitating or providing payments <u>from the manufacturer to the retailer for the trade promotion</u> as in the appealed claims.

Page 42 of the Examiner's Answer says ". . . trade promotions (i.e. non-coupon promotion)." Thus, the Examiner is defining a trade promotion as a non-coupon promotion. This is not consistent with the definition of trade promotion in the industry or the definition used in the background section of the present specification.

V. The Rejections of Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. §103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. §103(a) over Jones in view of Schultz. Pages 36 and 37 of the Examiner's Answer states that the:

> Appellant argues that Jones acts as an audit system for separate provision and verification of the number of promoted products sold, and as indicated by the 2004 Board Decision not for determining 'the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment. The Examiner answers that the Board fail to find that Jones teaches the previous limitation by mentioning that Jones clearly teaches that the reports provided are sent to the manufacturer to support the settlement process, however Jones does not teach that the independent system operator performs this settlement. Following the Board's decision the Examiner used Schultz patent to teach an independent system operator (see Schultz figure 1, items 3 and 4), which performs said settlement between retailers and manufacturers in trade or non-coupon promotions [*sic*].
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> Furthermore, the Examiner uses the Jones references to teach about contracts between retailer and manufacturer and the Schultz reference to teach about a third party audit system that performs the settlements between retailer and manufacturers in trade or non-coupon promotions [*sic*].

According to the 2004 Board Decision, and recognized by the Examiner's Answer, Jones does not (1) determine the amount of money the manufacturer owes to the

retailer for the trade promotion, and (2) facilitate the manufacturer's payment. The Examiner uses Schultz to teach an independent system operator which performs a settlement between retailer and manufacturers in trade promotions. However, as explained above, Schultz does not teach this.

Appellants respectfully submit that neither Jones nor Schultz teach or suggest determining the amount of money the manufacturer owes to the retailer for the trade promotion in accordance with the stored terms of the trade promotion in the independent system database (wherein the terms include at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion). Additionally, Appellants respectfully submit that Schultz does not facilitate the manufacturer's payment of the determined amount of money owed to the retailer for a promotion at least for the reasons set forth above.

Moreover, Appellants respectfully submit that the Examiner's reasoning that one of ordinary skill in the art would modify the Jones auditing system for trade promotions with the Schultz reward certificate processing system to make the Jones system more fraud proof (at Page 6 of the Examiner's Answer) is based on improper hindsight. Jones teaches a way to provide audited data regarding sales of products to retailers and manufacturers to enable those retailers and manufacturers to have a secondary reliable source of information that they may use to figure out or verify what they owe each other. Schultz teaches a way to permit consumers to garner rewards from manufacturers based upon the purchases they have made. Appellants respectfully submit that one of ordinary skill would not be motivated (without improper hindsight) to take one piece of Schultz and paste it into the Jones audit system, and that even if such combination was made, the result would be different than the claimed invention. That is, if a person skilled in the art actually modified Jones with Schultz, it appears that they would come up with a Jones type audit system which is employed for auditing or reporting on Schultz type consumer reward program transactions, not for facilitating a payment by the manufacturer to the retailer.

At page 42 of the Examiner's Answer, the Examiner reasons that both Jones and Schultz address the problem of ensuring accurate and timely settlement between consumer goods manufacturers and the retailers of their products when the manufacturers issue trade promotions. For the reasons set forth above, Appellants respectfully disagree that Schultz ensures accurate and timely settlement between consumer goods manufacturers and the retailers of their products when the manufacturers issue trade promotions. Even if correct, the Examiner's reasoning merely would show that Jones and Schulz are analogous prior art and does not provide any motivation or suggestion of why one skilled in the art would combine the Jones and Schultz references. Appellants respectfully submit that the Examiner is using improper hindsight to combine Jones and Schultz and for at least that reason the rejections of the trade promotion administration systems and methods set forth in Claims 1 to 32, 37 to 83, and 88 to 94 should be reversed.

VI. There Was a Long Felt and Unresolved Need for the Present Invention

Appellants submitted a Declaration under 37 C.F.R. §1.132 of Richard J. Windish which presented evidence of each presently pending claim satisfying at least a 10 year old long-felt need that was not solved by others. This Declaration explains that efficient and effective trade promotion administration systems and methods did not exist prior to the invention of Claims 1 to 32, 37 to 83, and 88 to 94. The Examiner's statement that Jones constitutes proper prior art on Page 43 of the Examiner's Answer does not dispute the evidence submitted in this Declaration. Accordingly, there was a long felt, but unresolved need for the trade promotion administration systems and methods set forth in Claims 1 to 32, 37 to 83, and 88 to 94.

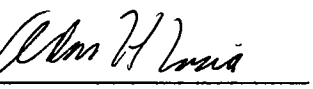
VII. CONCLUSION

For at least the forgoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully

once again request that the Board of Appeals reverse the rejection of Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. § 103 and find that these claims are patentable over the prior art of record.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

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